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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

May 11, 2001

VIA HAND DELIVERY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th St., NW  
Washington, DC 20554

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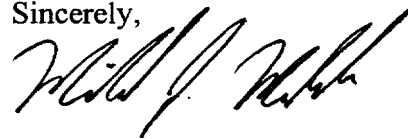
Re: CS Docket No. 01-7; In the Matter of Nondiscrimination of Interactive Television  
Services Over Cable

Dear Ms. Salas:

Telecommunications for the Deaf, Inc., by its undersigned counsel, submits an original and five (5) copies of reply comments for filing in the above-captioned matter.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. If you have any questions regarding this filing please contact me at (202) 295-8338.

Sincerely,



Andrew D. Lipman  
Michael J. Mendelson

Counsel for Telecommunications for the  
Deaf, Inc.

Enclosure

cc: Claude L. Stout

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Nondiscrimination in the Distribution of )  
Interactive Television Services Over Cable )

CS Docket No. 01-7

**REPLY COMMENTS OF  
TELECOMMUNICATIONS FOR THE DEAF, INC.**

Telecommunications for the Deaf, Inc. ("TDI"), by its undersigned counsel, respectfully submits the following reply comments pursuant to the Federal Communications Commission's ("Commission") Notice of Inquiry, released on January 18, 2001, regarding in the above-captioned proceeding. TDI is surprised and disappointed that the Commission did not address disability issues in the present Notice of Inquiry. However, TDI asserts that the Commission has sufficient jurisdiction to regulate interactive television ("ITV") service.

**I. INTRODUCTION**

TDI is a national advocacy organization actively engaged in addressing issues of equal access to telecommunications and media for persons who are deaf, hard of hearing, late deafened and deaf-blind. TDI believes that equal access to telecommunications services, equipment and technology ensures that persons with disabilities have the same educational and employment opportunities as other Americans. Only by ensuring such equal access will society benefit from the skills and talents of persons with disabilities.

## **II. THE COMMISSION HAS SUFFICIENT JURISDICTION TO REGULATE ITV SERVICES.**

ITV is available on multiple distribution platforms including digital cable, digital terrestrial television, and digital broadcast satellite.<sup>1</sup> Furthermore, ITV enhancements currently are capable of multiple functions including interactive broadcasts, video-on-demand, interactive programming guides, and two-way communications services. New ITV enhancements in development may soon be ready for deployment. ITV enhancements should not be able to evade Commission regulation simply because one distribution platform is regulated under a different part of the Commission's rules. The content is the same, and the effect on the consumer is the same.

The Commission has jurisdiction to regulate ITV services. The Commission may regulate ITV service as a telecommunications service, subject to Title II of the Communications Act ("Act"), or as an information service subject to Title I of the Act. TDI recommends that ITV be regulated as a hybrid service subject to Title II and Title I of the Act to the extent applicable. Furthermore, because ITV services are available through television programming, ITV services should be subject, to the extent applicable, to Section 713 of the Act, which governs closed captioning and video description requirements.<sup>2</sup>

As the Consumers Union stated in their comments, the Commission must ensure that ITV does not circumvent existing law.<sup>3</sup> In particular, ITV should not be allowed to circumvent Section 255 obligations under Title II, or closed captioning and video description obligations under Title VII, to the extent that ITV enhancements provide

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<sup>1</sup> See, Comments of Public Broadcasting Service and The Association of America's Public Television Stations, at 5, filed Mar. 19, 2001.

<sup>2</sup> See 47 U.S.C. § 713 (2000).

telecommunications and video programming services. As the Commission admitted in the NOI, ITV “. . . is a rapidly-developing service that could provide tremendous value to consumers.”<sup>4</sup> As it prepares to regulate ITV, the Commission must ensure that this tremendous value is available to all consumers, including those persons who are deaf, hard of hearing, deaf-blind, and late-deafened.

**A. ITV Services Are Subject to Commission Regulation Under the Closed Captioning Rules Pursuant to Section 713 of the Act.**

ITV services are broadcast to end users via cable, direct digital broadcast, or digital satellite. ITV enhancements are capable of providing streaming video and similar broadcast services. Therefore, providers of ITV programming and content should be classified as “video program distributors”<sup>5</sup> and subject to Section 713 of the Act and the Commission’s corresponding closed captioning and video description Rules.<sup>6</sup> Additionally, manufacturers of ITV equipment should be required to ensure that their products are capable of supporting closed captioning and video description for the relevant ITV enhancements, such as real-time interaction with other viewers, auditory or spoken messages, wrap-around screens, different camera angles, etc. Furthermore, the Commission must ensure that ITV enhancements do not interfere with, obscure, or destroy captions or video descriptions currently required under the Commission’s Rules.

**B. ITV Services Are Subject to Commission Regulation as Telecommunications Services.**

To the extent applicable, ITV services should be subject to regulation by the Commission as telecommunications services. Precedent exists to support this conclusion.

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<sup>3</sup> Comments of Consumers Union *et al.*, at 13, filed Mar. 19, 2001.

<sup>4</sup> *In the Matter of Nondiscrimination in the Distribution of Interactive Television Services Over Cable*, CS Docket No. 01-7, FCC 01-15, ¶ 1 (released Jan. 18, 2001).

<sup>5</sup> See 47 C.F.R. § 79.3 (2000).

In *AT&T Corp v. City of Portland*, the United States Court of Appeals for the Ninth Circuit ruled that At&T's @Home constitutes two separate services bundled together: (1) a "telecommunications" service by which end-users obtain access to the Internet; and (2) an "information service" component.<sup>7</sup> Therefore, to the extent that ITV enhancements provide access to the Internet, ITV should be regulated as a telecommunications service.

Transmission and delivery of ITV services can be point-to-multipoint or point-to-point. ITV represents the cusp of convergence – technology that is capable of delivering voice, data, information, and multimedia services to end-users through one device. To the extent that ITV provides regulated voice and data services, it should be governed under Title II of the Act.

Already, the television is a ubiquitous device in virtually all American homes. As ITV services become more affordable and readily available, they will proliferate throughout the country, potentially replacing the home telephone and personal computers. To ensure that persons with disabilities have equal access to these new services, ITV must be subject, in part, to regulation as telecommunications services.

Accordingly, to the extent applicable, ITV should be subject to Section 255 of the Act, which requires providers of telecommunications equipment and services to ensure that said equipment and services are accessible and usable to persons with disabilities, if readily achievable.<sup>8</sup> Furthermore, Section 255 provides that if not readily achievable, such a manufacturer or provider shall ensure that the equipment or service is compatible

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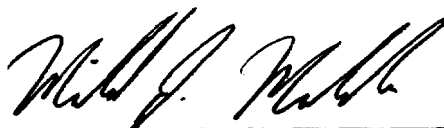
<sup>6</sup> See 47 C.F.R. §§ 15.119, 15.122, 79.1-79.2.

<sup>7</sup> *AT&T Corp. v. City of Portland*, 2000 WL 796708 (9<sup>th</sup> Cir. (Or.) (June 22, 2000)).

<sup>8</sup> See 47 U.S.C. § 255.

with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.<sup>9</sup>

Respectfully submitted,



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